No. _____

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

HERBERT BOUNDS,

Petitioner,

v.

THE CITY OF LEITCHFIELD,

Respondent.

==========

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH DISTRICT

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PETITION FOR WRIT OF CERTIORARI

==========

HERBERT BOUNDS
P.O. Box 441
Leitchfield, Kentucky 42755
1-502-259-4384

QUESTION PRESENTED

Did the District Court properly conclude that there existed no genuine issues of fact regarding the respondent having been in actual, open, notorious, continuous and adverse possession of a portion of real estate described in Petitioner's deed, for more than the fifteen years prior to the filing of the action and was the Defendant's Motion for Summary Judgment properly granted?

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VII. Appendix B - Opinion of the United States Court of Appeals for the Sixth Circuit

VIII. Appendix C - Proof of Service

The petitioner, Herbert Bounds, hereby respectfully requests that a writ of certiorari issue to review the Order of the U.S. Court of Appeals for the Sixth Circuit in File No. 92-5310 affirming the judgment of District Court for the Western District of Kentucky File No. 90-00003.

JURISDICTION

The Court of Appeals order in this matter was filed on August 18, 1992.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution.

STATEMENT OF THE CASE

The petitioner filed this case against the City of Leitchfield on January 10, 1990 and alleged that his fifth amendment rights had been violated by the taking of this property for a roadway and sewer line without just compensation.

The petitioner got title to the subject property by deeds dated March 29, 1960 of record at deed book 63 page 149 and by deed dated May 5, 1962 recorded at deed book 74 page 549, reference to the office of the County Court Clerk of Grayson County.

The petitioner is and was without sufficient funds to employ counsel to file this lawsuit and consequently should not be held to the highest standards of pleading cases and following rules.

Every citizen of his county should have the full right to his day in court.

The District Court entered summary judgment based upon what it called undisputed evidence that the City of Leitchfield had constructed Cole Avenue in or before 1974. The evidence was an aerial photograph

from the ASCS office which the defendant states shows a city street from 30,000 feet. Could not what the city was calling a street have been a private driveway instead as indicated by the affidavits of Maxie Green dated November 12, 1991 and Leonard Carnes dated November 13, 1991 who were adjacent property owners at the time and who stated that Cole Avenue was not established until 1976, which would have been within the fifteen year statute of limitations.

The petitioner was essentially ignorant of the rules that he could have presented these affidavits to the District Court, but the main point is that in order to grant the summary judgment it had to make many assumptions and presumptions as to what the evidence was, as depicted by the photographs.

At a trial of this matter a jury would be able to hear all of the evidence and decide the facts of his case.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because not only has the petitioner been denied the right to due process as guaranteed by the fifth amendment to the U.S. Constitution but now also he has been denied the right to have his case (day in court) judged by a jury of his peers.

CONCLUSION

For the reasons as set forth above, a writ of certiorari should issue to review the Order of the Court of Appeals in this matter.

Dated: 1-8-93

Respectfully submitted,

Herbert Bounds

Herbert Bounds
Petitioner

NO. 92-5310

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

HERBERT BOUNDS)

Plaintiff-Appellant)

)

vs.)

)

CITY OF LEITCHFIELD, KY)

)

Defendant-Appellee)

)

SHERRILL WATSON; DARRELL)

HARRELL; EDDIE MILLER;)

PAUL YOUNG,)

)

Defendants.)

BEFORE: MILBURN and GUY, Circuit Judges, and COOK, Chief District Judge.*

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*The Honorable Julian A. Cook, Jr., Chief U.S. District Judge for the Eastern District of Michigan, sitting by designation.

Herbert Bounds, a pro se Kentucky resident, appeals a district court judgment dismissing his complaint brought under 42 U.S.C. 1983 in which he alleged that the defendants violated his Fifth Amendment rights when they built a city street and sewer line on a portion of his property without paying him just compensation. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed.R. App.P. 34(a).

Bounds bought the property at issue in this lawsuit in March 1960. Subsequently, the City of Leitchfield, Kentucky built Cole Avenue and constructed a sewer line on a small portion of plaintiff's property. On January 10, 1990, Bounds filed a complaint in the federal district court against the City of Leitchfield, Kentucky, and several City officials. Per an agreement by the parties, the claims against all defendants

except the City of Leitchfield were dismissed. Subsequently, the district court granted the defendant's motion for summary judgment, finding that the defendant had established title to the land in question by adverse possession under Kentucky law.

Bounds has filed a timely appeal. He continues to argue the merits of his case. Both parties have filed briefs.

Upon review, we affirm the district court's judgment because there is no genuine issue of material fact and the defendant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). The court's review of a grant of summary judgment is de novo. EEOC v. University of Detroit, 904 F.2d 331, 334 (6th Cir. 1990).

Initially, it appears that Bounds' taking claim may not be ripe for federal review because Bounds has failed to use state procedures for obtaining just compansation and has made no claim that state procedures would be inadequate to compensate

him. See Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 195 (1985); Macene v. MJW, Inc. 951 F.2d 700, 704 (6th Cir. 1991).

Nonetheless, it is clear that the defendant is entitled to summary judgment because the undisputed facts of the case show that Bounds has lost his title to the land in question through the doctrine of adverse possession under Kentucky law. See Ky. Rev. Stat. 413.010; see also Tarter v. Tucker, 280 S.W.2d 150, 152 (Ky. 1955).

Accordingly, the judgment of the district court is hereby affirmed. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY THE ORDER OF THE COURT

Leonard Green

_____

Clerk

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY

AT OWENSBORO

HERBERT BOUNDS PLAINTIFF

V. CIVIL ACTION NO. 90-0003-0(CS)

CITY OF LEITCHFIELD, KY DEFENDANT

MEMORANDUM OPINION

This matter is before the court for consideration of the defendant's motion for summary judgment.

Plaintiff claims that a portion of his real property located in Grayson County, Kentucky was taken by the defendant for public use without just compensation in violation of the Fifth Amendment to the United States Constitution.

The defendant concedes that a small sliver of the north side of the plaintiff's property was taken for use as Cole Avenue and for the installation of a sewer line.

The defendant relies upon the doctrine of adverse possession to defeat the plaintiff's claims.

Under Kentucky law, a continuous period of fifteen years of open, notorious, and adverse possession is required to establish defeasance by adverse possession.

The court has reviewed the memorandum filed by the defendant and that filed by the plaintiff as well as the exhibits and affidavits which have been filed by both parties.

There is no dispute of any material fact. The sewer line was installed and used continuously since 1971. Cole Avenue came into existence prior to 1975. The affidavits filed by the plaintiff do not militate to the contrary. It is irrelevant whether Cole Avenue was paved, or whether it was merely an alley rather than a street. The fact is, there is no dispute of material fact that it encroached on the plaintiff's property openly, continuously, notoriously and adversely for more than fifteen years prior to the filing of this lawsuit.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY

AT OWENSBORO

HERBERT BOUNDS PLAINTIFF

V. CIVIL ACTION NO. 90-0003-0(CS)

CITY OF LEITCHFIELD, KY DEFENDANT

JUDGMENT

For the reasons stated in the memorandum opinion entered herein this date, the complaint of the plaintiff is hereby DISMISSED WITH PREJUDICE.

There being no just reason for delay in its entry, this is a final order and judgment.

IT IS SO ORDERED this 10 day of

/, 1992.

CHARLES R. SIMPSON III
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record
Pro Se Plaintiff

We conclude that, under Kentucky law, there is no constitutionally cognizable taking of which the plaintiff can properly complain because the plaintiff has lost through the doctrine of adverse possession his right to claim the sliver of land upon which the roadway and sewer encroach. Under these circumstances, summary judgment is proper and will be granted by separate order.

This 10 day of January, 1992.

CHARLES R. SIMPSON III
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record
Pro Se Plaintiff

Supreme Court, U.S.
FILED
MAY 20 1993
OFFICE OF THE CLERK

(2)

No. 92-1613

In The

Supreme Court of the United States

October Term, 1992

HERBERT BOUNDS,

Petitioner,

v.

CITY OF LEITCHFIELD,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE CASE

The Petitioner filed a pro se action against the Respondent alleging that his rights under the United States Constitution had been violated. In particular, he alleged that the Respondent had taken a small portion of his residential property by paving a street and installing a sewer line without paying just compensation therefor.

During the course of the litigation before the U.S. District Court, the Petitioner was strongly urged to retain counsel. He steadfastly refused.

Upon motion by the Respondent, the U.S. District Court granted a Summary Judgment dismissing the Complaint. That court found that there was no material issue of fact and that as a matter of law the Petitioner's claim was barred by the appropriate statute of limitations. This of course had the effect of vesting title in the Respondent by operation of the doctrine of adverse possession.

Following an appeal to the U.S. Court of Appeals For The Sixth Circuit, that judgment was affirmed.

The Petitioner now apparently seeks to be permitted to relitigate the case before this Court by claiming that he was denied his day in court. In point of fact, the record reveals that he has already had two days in court.

SUMMARY OF THE ARGUMENT

The Respondent submits that the petition for writ of certiorari should be denied on the grounds that there is no important or special reason for granting it. The decision of the U.S. Court of Appeals was consistent with

other U.S. Courts of Appeals, the Supreme Court of the Commonwealth of Kentucky as well as this Court. Likewise there is no important question of federal law which should be now addressed by this Court.

ARGUMENT

By definition, the grant of a petition for writ of certiorari is extraordinary. Rule 10.1 (a), (b) and (c) of the Rules Of The Supreme Court squarely address the grounds which normally support such an extraordinary writ. None of those grounds exist here.

This is a case in which the Petitioner is simply seeking to re-litigate a matter which two lower federal courts have previously decided.

The issues presented to those courts were neither novel nor complex. Rather, this is a case wherein the Petitioner lost title to a fraction of his property by reason of the ancient doctrine of adverse possession. It is firmly established that the doctrine of adverse possession may not be circumvented by alleging that such a loss of title is an unconstitutional taking without just compensation. *Commonwealth Department of Parks v. Stephens, Ky.*, 407 S.W.2d 711 (1966); *Stanley v. Schwalby*, 147 U.S. 508, 13 S.Ct. 418.

The Petitioner has presented no federal question about which there are conflicting decisions with other U.S. Courts of Appeals. He has not alleged that the lower courts' decisions were in conflict with either the Supreme Court of the Commonwealth of Kentucky nor this Court.

Given the fact that the doctrine of adverse possession is of such ancient origin and of such well settled heritage, there certainly is no novel question of federal law which should now be addressed by this Court.

Likewise, the lower courts granted extreme leniency to the petitioner during the litigation of the case. No viable complaint can now be heard that there was a departure from the usual and accepted course of judicial proceedings.

It is therefore inescapable that no grounds for granting the petition for writ of certiorari exist.

CONCLUSION

While the Respondent fully recognizes the fact that there are no absolute limitations upon this Court's discretion in granting a petition for writ of certiorari, the fact remains that there are no extraordinary issues presented in this case. As is evident, none of the customary grounds for hearing the case exist. For these reasons, the Respondent respectfully prays that the petition be denied.

Respectfully Submitted,

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